



LEVITT LAW

A PROFESSIONAL CORPORATION

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Waste Management of Orange County David Koppel/Joe Robledo Managers 1800 S Grand Ave. Santa Ana, CA, 92705	CT Corporation Waste Management of Orange County 818 W. 7 th Street, #930 Los Angeles, CA 90017
Waste Management Attn: David Koppel Route Manager 16122 Construction Circle East Irvine, CA 92606	Catherine McCabe Administrator U.S. Environmental Protection Agency Mail Code: 110 IA 1200 Pennsylvania Avenue, N.W. Washington, DC 20460
Mr. Jeff Sessions U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-001	Kurt Berchtold Executive Officer Regional Water Quality Control Board Santa Ana Region 3737 Main Street, Ste. 500 Riverside, CA 92501
Alexis Strauss Acting Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	Thomas Howard Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100

Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

Levitt Law, APC ("Levitt Law") represents Our Clean Waters ("OCW"), a non-profit corporation organized under the laws of the State of California. This letter is to give notice that Levitt Law, on behalf of OCW, intends to file a civil action against Waste Management of Orange County ("WMOC") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at WMOC's Facility located at 16122 Construction Circle East, Irvine, CA 92606 (the "Facility").

OCW is concerned with the environmental health of the Peters Canyon Channel, on behalf of the public that uses and enjoys said Water Bodies, its inflows, outflows, and other waters of the affected Watershed. The public's use and enjoyment of these waters is negatively affected by the pollution caused by WMOC's operations. Additionally, OCW acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses WMOC's unlawful discharge of pollutants from the Facility into conveyance channels that discharge into the Peters Canyon Channel, which flows into Reach 1 of the San Diego Creek. The facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit").¹ The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As appropriate, OCW refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." Investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(b)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by the Clean Water Act Section 505(b), this Notice of Violations and Intent to File Suit provides notice to WMOC of the violations that have occurred and which continue to occur at the Facility. Consequently, OCW hereby places WMOC on formal notice, that after the expiration of sixty (60) days from the date of this Notice of Violations and the Intent to Sue, OCW intends to file suit in federal court against WMOC under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the CWA and the General Permit. The violations are described more fully below.

During the 60-day notice period, OCW is willing to discuss effective remedies for the violations noticed in this letter. We suggest that OCWM contact OCW's attorneys at Levitt Law within the next twenty (20) days so these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The Waste Management of Orange County ("WMOC") Facility is located at 16122 Construction Circle East, Irvine, CA. The site comprises approximately 13.5 acres of land on one parcel (Accessor's Parcel Number 1021-032-01-P002). WMOC operates as a storage and maintenance facility for waste hauling equipment and vehicles and certifies that the Facility is classified under Standard Industrial Classification ("SIC") codes 4212 and 4214. WMOC conducts the following industrial activities at the Facility: vehicle maintenance; hazardous waste storage and transfer; vehicle and equipment washing; vehicle fueling; welding and container repair; painting; recyclables storage; e-waste storage; collection vehicle storage; the use of compressors and other operational equipment. At a minimum, WMPC utilizes the following industrial materials at the Facility: motor oil; hydraulic oil; lubricating oil; used oil; hazardous waste; electronic waste; recyclables; and diesel fuel. Possible pollutants from the Facility include: pH, total suspended

¹ On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial General Permit except for purposes of enforcement actions brought pursuant to the prior permit.

solids ("TSS"), oil and grease ("O&G"), Chemical Oxygen Demand ("COD"), Iron ("Fe"), additional metals, and other pollutants. Storm water from the Facility discharges, via the local storm sewer system and/or surface runoff indirectly into the Peters Canyon Channel.

B. The Affected Water

The Peters Canyon Channel, Reach 1 of the San Diego Creek, and the overall affected Watershed are waters of the United States. The CWA requires that water bodies such as the Peters Canyon Channel and its inflows and outflows meet water quality objectives that protect specific "beneficial uses." The beneficial uses of the Peters Canyon Channel and Reach 1 of the San Diego Creek include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the Peters Canyon Channel, Reach 1 of the San Diego Creek, and the overall Affected Watershed, and threatens the beneficial uses and ecosystems of these waters, which includes habitats for threatened or endangered species.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311(a)). Further, it is unlawful to discharge in violation of the terms and conditions of an NPDES permit, CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of storm water associated with industrial activities). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Industrial General Permit in order to lawfully discharge.

WMOC has submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the Industrial General Permit since at least 1992 (WDID Number 830I009502). However, information available to OCW indicates that storm water discharges from the Facility have violated the terms of the Industrial General Permit, and has been, and continues to violate the CWA. Apart from discharges that comply with the Industrial General Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

Pursuant to Section I.A.8 of the Industrial General Permit, a facility operator must comply with all conditions of the Industrial General Permit. (Industrial General Permit, §I.A.8. [dischargers must "comply with all requirements, provisions, limitations, and prohibitions in this General Permit."]). Failure to comply with the Industrial General Permit is a Clean Water Act violation. (Industrial General Permit §XXI.A.). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) Industrial General Permit termination, revocation and re-issuance, or modification; or (c) denial of an Industrial General Permit renewal application. As an enrollee, WMOC has a duty to comply with the Industrial General Permit and is subject to all of the provisions therein.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial General Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best

available technology economically achievable ("BAT") for toxic pollutants² and best conventional pollutant control technology ("BCT") for conventional pollutants. Industrial General Permit § I(D)(32), II(D)(2); Previous Industrial General Permit, Order Part B(3). Specifically, the Permit "requires control of pollutant discharges using BAT and BCT to reduce and prevent discharges of pollutants, and any more stringent effluent limitations necessary for receiving waters to meet applicable water quality standards." (Industrial General Permit §I(D)(32); see also §V.A.). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. These benchmark levels are reflected as Numeric Action Level (NAL) values in the current Industrial General Permit (also known as Benchmark values in the Previous Industrial General Permit). These levels are set at the maximum pollutant concentration present to determine if an industrial facility is employing BAT and BCT. (See Attachment 1 of this Notice for applicable Benchmark Values).³

Additionally, the Previous Industrial General Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. See Previous Industrial General Permit § VIII. The Previous Industrial General Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial General Permit. *Id.* WMOC falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the previous Industrial General Permit during its effective period.

WMOC's self reporting data shows a complete failure to adequately report numerical pollutant discharge values in every instance over at least the past 5 years, with the possible exception of the 3/11/2016 qualifying storm event, which included analysis of Iron and Chemical Oxygen Demand (COD). Iron results were as much as 6.4 times the NAL value and COD results were as much as 2.4 times the NAL value. In the Notice of Violation dated 5/2/2016 (Attachment 2), issued by the Santa Ana Regional Water Quality Control Board, it states "A review of the historical water sampling results in SMARTS for this facility indicates that iron and chemical Oxygen Demand water quality benchmarks were exceeded in 2007. These parameters are no longer analyzed in storm water runoff samples." WMOC was aware of high levels of Iron and COD historically present at the Facility and knowingly ceased sampling and reporting for these parameters until the Regional Board required them to do so for the 3/11/2016 storm event.

Furthermore, in a letter dated 9/1/2016 (Attachment 2) from the Santa Ana Regional Water Quality Control Board in response to the aforementioned NOV, the following is stated: "In addition, in reviewing the storm water monitoring report (Ad Hoc Report) submitted in SMARTS for the March 11, 2016 storm event, neither iron nor chemical oxygen demand data was included. This is despite the fact that data for both constituents was provided in the response

² BAT is defined at 40 C.F.R. § 437.1 et seq. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

³ The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP"). See 73 Fed. Reg. 56,572 (Sept 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharged From Industrial Activities).

to the Notice of Violation. The Ad Hoc Report is therefore incomplete. The Ad Hoc Report for March 11, 2016 will be remanded, at which point the new Ad Hoc Report must be submitted in SMARTS for the March 11, 2016 storm event with the results from all analyzed parameters." Both the Industrial General Permit and Clean Water Act make it unlawful to falsify reports, punishable by a \$10,000 fine or by imprisonment, or both (Industrial General Permit §XXI.N; 33 U.S.C. §1319(c)(1)).

Based on WMOC's self-reporting data and/or lack thereof, WMOC's self-reporting of industrial storm water discharges shows a pattern of exceedances of Benchmarks and NAL values, especially as it pertains to the parameters TSS, O&G, Iron, and COD. This pattern of exceedances of Benchmarks and NAL values indicate that WMOC has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial General Permit and Previous Industrial General Permit. Self monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

OCW alleges and notifies WMOC that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark Values for TSS, O&G, Iron, and COD. WMOC's ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values, and BAT and BCT based levels of control, also demonstrate that WMOC has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all storm water prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

WMOC's failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each and every day WMOC discharges without meeting BAT/BCT. OCW alleges that WMOC has discharged storm water containing excessive levels of pollutants from the Facility to the Peters Canyon Channel and Reach 1 of the San Diego Creek during significant local rain events over 0.1 inches in the last five (5) years (Attachment 3).⁴ Every significant rain event that has occurred in the last five (5) years represents a discharge of polluted storm water run-off into the Peters Canyon Channel and Reach 1 of the San Diego Creek. WMOC is subject to civil penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

B. Discharges Impairing Receiving Waters

The CWA and Industrial General Permit's Discharge Prohibitions disallow storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. See Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (2). The Industrial General Permit also prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. See Industrial General Permit, Section VI (b-c); Previous Industrial General Permit Order, Part C (1). Receiving Water Limitations of the Industrial General Permit prohibit storm water discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. See Industrial

⁴ The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP"). See 73 Fed. Reg. 56,572 (Sept. 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities).

General Permit, Section VI (a); Previous Industrial General Permit Order, Part C (2). Applicable WQS are set forth in the California Toxic Rule ("CTR")⁵ and Santa Ana River Basin Water Quality Control Plan (Region 8) (the "Basin Plan").⁶ Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan.

The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000). See http://www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/index.shtml to reference the Basin Plan. The beneficial uses of the Santa Ana River and its tributaries include groundwater recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, and rare, threatened or endangered species. The non-contact water recreation use is defined as "uses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.*

The Basin Plan establishes WQS for all Inland Surface Waters, including the Affected Water Body Watershed, which contain, but are not limited, to the following standards:

- That "toxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-20.
- That "waste discharges shall not in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-14.
- That "inland surface waters shall not contain suspended or settleable material in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors." *Id.* at 4-16.
- That "the pH of Inland surface waters shall not be raised above 8.5 or depressed below 6.5 as a result of controllable water quality factors." *Id.* at 4-18.
- That "waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-10.
- That "waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses." *Id.* at 4-10.
- That "waste discharges shall not result in increases in COD levels in inland surface waters which exceed values shown in Table 4-1 or which adversely affect beneficial uses." *Id.* at 4-9.

OCW alleges that WMOC's storm water discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial General Permit and the WQS set forth in the

⁵ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

⁶ The Basin Plan is published by the Santa Ana Regional Water Quality Control Board and can be accessed at <http://www.waterboards.ca.gov>

Basin Plan and CTR, and is clearly in violation of the CWA. These allegations are based on WMOC's self-reported data submitted to the Santa Ana Regional Water Quality Control Board. The sampling results indicate that WMOC's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS (See Attachment 1).

OCW alleges that each day that WMOC has discharged storm water from the Facility, WMOC's storm water has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Peters Canyon Channel, San Diego Creek Reach 1, and the Affected Watershed. OCW alleges that WMOC has discharged storm water exceeding Receiving Water Limitations and/or WQS from the Facility to the Peters Canyon Channel, San Diego Creek Reach 1, and the Affected Watershed during significant local rain events over 0.1 inches in the last five (5) years (See Attachment 3). Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or causes or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial General Permit and the CWA. WMOC is subject to penalties for each violation of the Industrial General Permit and the CWA within the past five (5) years.

C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

The Industrial General Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). See Industrial General Permit, Section X (B); Previous Industrial General Permit, Part A (I) (a) and Provision E(2). The Industrial General Permit also requires dischargers to make all necessary revisions to the existing SWPPP promptly. See Industrial General Permit, Section X (B); Previous Industrial General Permit Order, Part E (2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all WMOC pollutant sources, a description of the BMPs that will reduce or prevent pollutants in storm water discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a Facility manager determines that the SWPPP is in violation of any requirements of the Industrial General Permit. See Industrial General Permit, Section X (A); Previous Industrial General Permit, Part A.

Based on information available to OCW, WMOC has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements stated in Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit. For Example, WMOC's SWPPP does not include and/or WMOC has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A (8) of the Industrial General Permit as evidenced by the data in Attachment 1. The Facility's storm water samples have consistently exceeded EPA Benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, WMOC has failed to sufficiently update and revise the Facility's SWPPP. The facility's SWPPP has therefore never achieved the Industrial General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

Additionally, the SWPPP fails to mention Iron and Chemical Oxygen Demand as potential pollutants, does not assess the potential sources of these pollutants, and does not include them as parameters to be analyzed for despite historical exceedances of Iron and Chemical Oxygen Demand. Further demonstrating inadequacy of the SWPPP.

Accordingly, WMOC has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit, and WMOC will continue to be in violation every day until it develops and implements an adequate SWPPP. WMOC is subject to penalties for each violation of the Industrial General Permit and the CWA occurring within the past five (5) years.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations

The Industrial Storm Water Permit requires Facility operators to develop and implement a Monitoring Implementation Program ("MIP"). See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B (I) and Order, Part E (3). The Industrial General Permit requires that the MIP ensures that the Facility adequately detects and measures its storm water discharges to ensure compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit. *Id.* Facility operators must ensure that their MIP practices reduce or prevent pollutants in storm water and authorized non-storm water discharges as well as evaluate and revise their practices to meet changing conditions at the Facility. *Id.* This may include revising the SWPPP as required by Section X (A) of the Industrial General Permit and/or the corresponding Section of the Previous Industrial General Permit.

The MIP must measure the effectiveness of BMPs used to prevent or reduce pollutants in storm water and authorized non-storm water discharges, and Facility operators must revise the MIP whenever appropriate. See Industrial General Permit, Section XI; Previous Industrial General Permit, Section B. The Industrial General Permit requires Facility operators to visually observe and collect samples of storm water discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the Facility's monitoring program will satisfy these objectives. *Id.*

The Previous Industrial General Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at the facility (1997 Industrial General Permit, § B(5)). The current Industrial General Permit now mandates that facility operators sample four (rather than two) storm water discharges from all drainage locations over the course of the reporting year (2015 Industrial General Permit, §§ XI(B)(2), (3)). Despite these requirements, WMOC submitted the Annual Report for the 2015-2016 reporting period with analysis data for only two (2) storm events; and the event sampled on 1/5/2016 did not include data from all of the facility's SWPPP designated sample locations. Also, the submitted Annual Reports for 2013-2014 and 2014-2015 reporting years have no sampling data. WMOC has failed to adequately explain why there is a lack of required sampling data.

Additionally, as previously described, WMOC had knowledge of previous Iron and COD exceedances but failed to consistently analyze their discharges for these parameters. This directly affected WMOC's requirement to adequately detect and measure its storm water discharges to

ensure comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial General Permit; and to adequately measure the effectiveness of BMPs in place at the Facility.

WMOC has been operating the Facility with an inadequately developed and/or inadequately implemented MIP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial General Permit. For example, the data in Attachment 1 indicates that WMOC's monitoring program has not ensured that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial General Permit as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in storm water as required by the Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B. Similarly, the data in Attachment 1 indicates that WMOC's monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial General Permit, Section XI and/or the Previous Industrial General Permit, Section B.

As a result of WMOC's failure to adequately develop and/or implement an adequate MIP at the Facility, WMOC has been in daily and continuous violation of the Industrial Storm Water Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. WMOC will continue to be in violation of the monitoring and reporting requirement each day that WMOC fails to adequately develop and/or implement an effective MIP at the Facility. WMOC is subject to penalties for each violation of the Industrial General Permit and the CWA occurring for the last five (5) years.

The WMOC owners and/or Operators had numerous opportunities to sample but failed to do so, and failed to monitor all locations and all constituents as required. They are thus subject to penalties in accordance with the Industrial General Permit – punishable by a minimum of \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015. (33 U.S.C. §1319(d); 40 CFR 19.4; Industrial General Permit, §XXI.Q.1).

E. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by an NPDES Permit issued pursuant to Section 402 of the CWA. See 33 U.S.C. § 1311 (a), 1342. WMOC sought coverage for the Facility under the Industrial General Permit, which states that any discharge from an industrial Facility not in compliance with the Industrial General Permit must be either eliminated or permitted by a separate NPDES permit. Industrial General Permit, Section III; Previous Industrial General Permit Order, Part A (1). Because WMOC has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial General Permit, each and every discharge from the Facility described herein, not in compliance with the Industrial General Permit, has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301 (a) of the CWA, 33 U.S.C. § 131 I(a).

III. PERSON RESPONSIBLE FOR THE VIOLATIONS

Waste Management of Orange County ("WMOC") is responsible for the violations at the Facility located at 16122 Construction Circle East, Irvine, CA 92606 as described above.

IV. NAME AND ADDRESS OF NOTICING PARTY

OUR CLEAN WATERS

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V. LEGAL COUNSEL

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VI. REMEDIES

As stated previously, OCW intends, at the close of the 60-day notice period or thereafter, to file suit under CWA section 505(a) against WMOC for the above-referenced violations. OCW will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, OCW will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against OCWM in this action. **The CWA imposes civil penalty liability of up to \$51,570 per day of violation occurring after November 2, 2015 and \$37,500 per day of violation occurring before November 2, 2015, plus attorneys' fees and costs (33 U.S.C. § 1319(d); 40 C.F.R. § 19.4).** OCW will seek to recover such penalties, restitution, attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d). It should be noted that the statute of limitations is five (5) years for citizen enforcement actions brought pursuant to the federal Clean Water Act, bringing potential liabilities from February 13, 2012 to the present. Furthermore, actions are allowable under prior expired permits within the five (5) year period. (See *Illinois v. Outboard Marine, Inc.*, (7th Cir. 1982) 680 F.2d 473, 480-81 [relief granted for violations of an expired Permit]; *Sierra Club v. Aluminum Co. of Am.*, (N.D.N.Y. 1984) 585 F. Supp. 842, 853-854 [holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit]).

As noted above, OCW and its Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott L. Levitt', with a long, sweeping horizontal stroke extending to the right.

Scott L. Levitt, Esq.

ATTACHMENT 1

1. Self-Reported Sampling Conducted by WMOC Demonstrating Non-compliance with BAT/BCT

Date of Sample	Discharge Point	Parameter	EPA Benchmark Value / NAL Value	Sample Value
1/5/2016	SW1	Oil and Grease	15 mg/L	17 mg/L
1/5/2016	SW1	Total Suspended Solids	100 mg/L	269 mg/L
1/5/2016	SW2	Total Suspended Solids	100 mg/L	180 mg/L
1/5/2016	SW3	Total Suspended Solids	100 mg/L	230 mg/L
3/11/2016	SW1	Iron	1.0 mg/L	5.6 mg/L
3/11/2016	SW1	Chemical Oxygen Demand	120 mg/L	170 mg/L
3/11/2016	SW1	Total Suspended Solids	100 mg/L	130 mg/L
3/11/2016	SW2	Iron	1.0 mg/L	3.2 mg/L
3/11/2016	SW2	Chemical Oxygen Demand	120 mg/L	290 mg/L
3/11/2016	SW3	Iron	1.0 mg/L	2.0 mg/L
3/11/2016	SW3	Chemical Oxygen Demand	120 mg/L	130 mg/L
3/11/2016	SW3	pH	6 - 9	5
3/11/2016	SW4	Iron	1.0 mg/L	5.0 mg/L
3/11/2016	SW6	Iron	1.0 mg/L	2.3 mg/L
3/11/2016	SW7	Iron	1.0 mg/L	6.4 mg/L
3/11/2016	SW7	Total Suspended Solids	100 mg/L	140 mg/L
3/11/2016	SW9	Iron	1.0 mg/L	2.1 mg/L

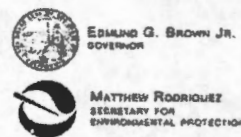
2. Self-Reported Sampling Conducted by WMOC Demonstrating Non-compliance with Water Quality Standards in the Santa Ana Basin Plan

Date of Sample	Discharge Point	Parameter	Santa Ana Basin Plan Standard	Sample Value
3/11/2016	SW2	pH	6.5 - 8.5	6
3/11/2016	SW3	pH	6.5	5
3/11/2016	SW4	pH	6.5	6
3/11/2016	SW9	pH	6.5	6

The above referenced discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Industrial General Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Industrial General Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Industrial General Permit.

ATTACHMENT 2

SARWQB Notice of Violation (NOV) and SARWQB NOV Response Letter



Santa Ana Regional Water Quality Control Board

May 2, 2016

Joel Robledo
Waste Management of Orange County
16122 Construction Cir E
Irvine, CA 92606

NOTICE OF VIOLATION OF THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES PERMIT NO. CAS000001 (WDID # 8 30I009502)

Dear Mr. Robledo:

NPDES Permit No. CAS000001, General Permit for Storm Water Discharges Associated with Industrial Activities, Order 2014-0057-DWQ (General Permit) generally prohibits the discharge of materials other than storm water from industrial sites. The General Permit requires that coverage be obtained by facilities which have exposure of materials, products, wastes, or processes to storm water, or where certain industrial processes take place and by certain facilities that do not have this exposure. Further, the General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), which identifies Best Management Practices (BMPs) designed to reduce or eliminate the discharge of process materials, sediment, and other pollutants to storm drains and/or receiving waters.

On February 18, 2016 Regional Board staff conducted an inspection of the facility located at 16122 Construction Circle East (WDID: 8 30I009502) in the City of Irvine. As a result of the inspection, Regional Board staff established the following:

- Mr. Koppel indicated that storm water runoff samples had been collected in January and the laboratory results had returned but the data had not yet been entered into SMARTS.
- Oil stains were observed throughout the facility. Some oil stains were covered with absorbent, others were not. Dripillows and absorbent pads were not used in an ongoing basis underneath vehicles undergoing maintenance in accordance with the SWPPP. An oily sheen was observed in many of the puddles generated from the storm event that occurred the night before the inspection and oil had collected under some of the scraped vehicles. Similar conditions were recorded in an inspection conducted on January 10, 2011 by Regional Board staff.
- Several waste containers were stored without lids and left open to accumulate storm water. Discolored water was observed in at least one open waste container. The SWPPP uploaded to SMARTS on June 30, 2015 states that "empty containers without lids are turned upside down during storm events to prevent residual material from coming into contact with stormwater," however, only some of the empty waste containers were stored on their sides to prevent the collection of storm water from the day before. This practice was not applied consistently. Inconsistent waste container storage

practices were also observed during an inspection conducted on January 10, 2011 by Regional Board staff.

- Scrap metal storage and vehicle parts were observed inside large containers with open sides. Storm water had collected inside the container and appeared to come into contact with rusting debris. The SWPPP states that rolling tarps are implemented on large storage containers, but they were not observed at the time of the inspection.
- A pile of rusting spacers was stored next to the waste container storage area exposed to storm water.
- Electronic waste was stored without cover and located outside of the designated e-waste storage area indicated in the SWPPP and Site Map. Storm water from the night before had collected on top of the waste, indicating that it had not been covered during the storm event.
- Sediment, rust colored dust, and trash were visible surrounding the waste containers and in the concrete swale in the waste container storage area. Trash, debris and sediment had accumulated in the unpaved temporary recyclables storage area. Dirt appeared to be eroding away from the unpaved area and towards a driveway. The bails of recycled material were covered with torn tarps in an inconsistent manner. Similar housekeeping issues were observed during an inspection conducted on January 10, 2011 by Regional Board staff.
- Wash water was observed spilling out of the paint booth. Evidence of historic spills were visible on the surrounding concrete. Accompanying staff said that they have BMPs in place, including the clarifier to prevent the paint wash water from exiting the facility.

Regional Board staff established the following based on a review of the SWPPP associated documents uploaded to SMARTS:

- The SWPPP states that there have been no significant spills recorded from this facility. However, a complaint was recorded in SMARTS from this facility on February 28, 2014, for a wash rack that had overflowed and discharged to the street.
- The site map was unclear about where storm water samples are being collected.
- The SWPPP lists industrial pollutants related to receiving waters with 303(d) listed impairments identified in Appendix 3 of the General Permit, but does not identify if these pollutants may be causing or contributing to an exceedance of a water quality standard in the receiving water.
- A review of the historical storm water sampling results in SMARTS for this facility indicates that iron and chemical oxygen demand water quality benchmarks were exceeded in 2007. These parameters are no longer analyzed in storm water runoff samples.

Based on the above information, Regional Board staff has concluded that Waste Management of Orange County has violated provisions of the General Permit as follows:

- The oil spills observed throughout the facility and the wash water flowing out of the paint booth constitutes a failure to promptly clean all spills of industrial materials or wastes that occur during handling and properly dispose of the material in violation of Provisions X.H.1.d.v. and X.H.1.c.ii. and is a threatened violation of Prohibition III.B.
- The open containers exposing residual waste, stored scrap metal, and vehicle parts to storm water constitutes a failure to cover industrial waste disposal containers and industrial material storage containers when not in use in violation of Provision X.H.1.d.iii.
- The exposed electronic waste, trash, bailed recycled material, and scrap metal constitutes failure to clean and dispose of all identified debris and wastes in violation of Provision X.H.1.a.i.
- The eroding sediment from the unpaved temporary recyclable storage area constitutes a failure to provide effective stabilization for erodible areas prior to a forecasted storm event in violation of Provision X.H.1.e.ii.
- Not identifying in the SWPPP the 303(d) listed pollutants that may be causing to or contributing an exceedance of a water quality standard in the receiving water is a violation of Provision X.G.2.a.ix, and a potential violation of Provision XI.B.6.e.

In order to address these violations, please take the following actions:

- Please ensure that analytical results for all samples are submitted via SMARTS within 30 days of obtaining results for each sampling event.
- Ensure employees adhere to the BMPs listed in the SWPPP concerning vehicle storage and spill and leak response to prevent and clean oil spills in a timely manner.
- Ensure employees adhere to the BMPs listed in the SWPPP concerning waste container storage to prevent storm water contact with residual materials.
- Implement the rolling tarps on the large open storage containers mentioned in the SWPPP.
- Store waste materials in the designated areas indicated in the SWPPP and site map and do not store it in areas where it could potentially come into contact with storm water.
- Improve housekeeping actions to prevent the accumulation of dirt, debris, and trash throughout the facility.
- Contain wash water leaving the paint booth and ensure BMPs are in place to prevent it from leaving the facility.
- Stabilize the unpaved areas to prevent erosion and tracking.
- Additionally analyze storm water samples for iron and chemical oxygen demand.
- Identify all areas of industrial activity with the potential to discharge any of the 303(d) listed pollutants in Peters Canyon Channel and assess if the discharge from this facility

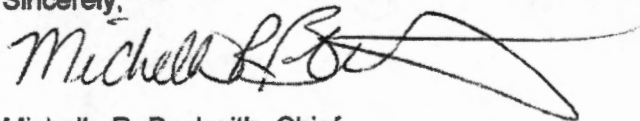
May 2, 2016

could be causing or contributing to an exceedance of a water quality standard. Update the SWPPP to reflect this assessment. Analyze storm water samples if necessary for the applicable industrial parameters based on this assessment. You must also update your NOI in SMARTS to reflect the pollutant assessment under the Additional Facility Info tab.

- By **June 1, 2016**, electronically submit a report via email to santaana@waterboards.ca.gov describing the actions taken and planned actions, if applicable, in response to this notice.

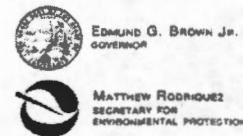
Please be advised that violations of the General Permit may result in the imposition of administrative civil liability in an amount of up to \$10,000 for each day of violation and \$10 per gallon for discharges above 1,000 gallons under Section 13385 of the California Water Code. If you have any questions regarding this matter, please contact Barbara Barry at Barbara.Barry@waterboards.ca.gov or at (951) 248-0375.

Sincerely,



Michelle R. Beckwith, Chief
Coastal Storm Water Unit

cc: OC Public Works – Richard Boon
City of Irvine, NPDES Coordinator – Amanda Carr



Santa Ana Regional Water Quality Control Board

September 1, 2016

Paul Willman
Waste Management of Orange County
16122 Construction Cir E
Irvine CA 92606

RESPONSE TO NOTICE OF VIOLATION OF THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES, ORDER NO. 2014-0057-DWQ, NPDES PERMIT NO. CAS000001 (WDID # 8 301009502)

Dear Mr. Willman:

Thank you for your response to the Notice of Violation dated May 2, 2016. After consideration of the response, Regional Board staff has noticed that the intent of Waste Management staff is to not continue sampling for chemical oxygen demand in storm water runoff samples despite the fact that benchmark exceedances were detected in three of the seven samples collected on March 11, 2016. Although the average concentration of all seven samples was below the Numeric Action Level for chemical oxygen demand, the exceedances detected indicate there is a potential for concern for this constituent. Please continue to analyze for this constituent in all storm water runoff samples and update the Monitoring Implementation Plan to reflect this.

In addition, in reviewing the storm water monitoring report (Ad Hoc Report) submitted in SMARTS for the March 11, 2016 storm event, neither iron nor chemical oxygen demand data was included. This is despite the fact that data for both constituents was provided in the response to the Notice of Violation. The Ad Hoc Report is therefore incomplete. The Ad Hoc Report for March 11, 2016 will be remanded, at which point a new Ad Hoc report must be submitted in SMARTS for the March 11, 2016 storm event with results from all analyzed parameters.

Please complete the above actions by **September 15, 2016**.

Sincerely,

Barbara M. Barry
Environmental Scientist

ATTACHMENT 3

Rain Dates, WMOC, Irvine, CA

Data from John Wayne Airport Weather Station (Approx. 3 miles from WMOC)

2-9-12 to 2-9-17

Days with Precipitation over 0.1 inch

2/15/2012	11/21/2013	1/5/2016
3/17/2012	11/29/2013	1/6/2016
3/18/2012	12/7/2013	1/13/2016
3/25/2012	12/19/2013	2/18/2016
4/11/2012	2/27/2014	3/6/2016
4/13/2012	2/28/2014	3/7/2016
7/13/2012	3/1/2014	3/11/2016
7/14/2012	4/2/2014	
11/17/2012	11/1/2014	
11/29/2012	12/2/2014	
11/30/2012	12/12/2014	
12/3/2012	12/17/2014	
12/13/2012	1/11/2015	
12/18/2012	2/23/2015	
12/24/2012	3/1/2015	
12/26/2012	3/2/2015	
12/29/2012	5/8/2015	
1/24/2013	5/14/2015	
1/25/2013	5/15/2015	
1/26/2013	7/18/2015	
2/8/2013	9/9/2015	
5/6/2013	9/15/2015	
7/26/2013	12/11/2015	
10/9/2013	12/22/2015	